

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:14-cv-00310-MR
CRIMINAL CASE NO. 1:11-cr-00010-MR-DLH**

JAMES W. BAILEY, JR.,

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Petitioner,

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vs.

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O R D E R

UNITED STATES OF AMERICA,

)

Respondent.

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THIS MATTER is before the Court on the Petitioner’s “Motion Pursuant To Rule 60(b) and 60(d) Independent Action,” which the Court construes as a motion for reconsideration. [Doc. 12].

Upon review of the Petitioner’s motion, the Court finds no basis in law to reconsider its prior Order denying and dismissing the Petitioner’s motion to vacate. Accordingly, the Petitioner’s motion for reconsideration is denied.

The Court further finds that Petitioner has not made a substantial showing of a denial of a constitutional right. See generally 28 U.S.C. § 2253(c)(2); see also *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a “petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims

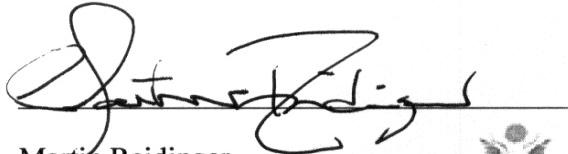
debatable or wrong") (citing Slack v. McDaniel, 529 U.S. 473, 484-85 (2000)). Petitioner has failed to demonstrate both that this Court's dispositive procedural rulings are debatable, and that the Motion to Vacate states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85. As a result, the Court declines to issue a certificate of appealability. See Rule 11(a), Rules Governing Section 2255 Proceedings for the United States District Courts, 28 U.S.C. § 2255.

IT IS, THEREFORE, ORDERED that the Petitioner's motion for reconsideration [Doc. 12] is **DENIED**.

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, the Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Signed: September 6, 2016



Martin Reidinger
United States District Judge

